



Comptroller General  
of the United States

5301810

Washington, D.C. 20548

## Decision

Matter of: Donald R. Barnard

File: B-254584

Date: October 5, 1994

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### DIGEST

A transferred employee moved out of his residence at his old duty station and began an authorized period of temporary quarters occupancy at his new duty station. He returned to his old duty station in an approved annual leave status and temporarily reoccupied his old residence with his family. His claim for subsistence expenses during that time is denied. Since his immediate family continued to reside there, the residence was not vacated and the employee is not entitled to subsistence expense reimbursement while there.

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### DECISION

This decision is in response to a request from an Authorized Certifying Officer, National Finance Center, Department of Agriculture, concerning an employee's entitlement to be reimbursed additional temporary quarters subsistence expenses (TQSE), during a period of annual leave at his old duty station. We conclude that the employee is not entitled to TQSE during the period he occupied his old residence, but he is entitled to TQSE for the additional days at his new duty station following the period of annual leave.

Mr. Donald R. Barnard, an employee of the Agriculture Research Service, Department of Agriculture, stationed in Poteau, Oklahoma, was transferred to Gainesville, Florida, with a reporting date of on or about October 23, 1988. He was authorized an initial period of TQSE for himself and his family, not to exceed 30 days. He performed unaccompanied travel and chose to begin his TQSE period upon his arrival in the Gainesville area on October 23, 1988. He remained in temporary quarters there from October 23, 1988, until November 15, 1988 (24 days). He then returned to Poteau, Oklahoma, in an approved annual leave status until December 8, 1988, when he returned to Gainesville, Florida,

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<sup>1</sup>Ms. Sandra S. Williams - Reference FST-1 RJP.

and resumed occupancy of temporary quarters there until December 13, 1988.

Mr. Barnard submitted a voucher claiming 30 days TQSE in Gainesville for the split period. That portion of his claim which was beyond 30 days from October 23, 1988, was disallowed by the agency on the basis that days of temporary quarters must run consecutively and may only be interrupted due to official necessity, such as a temporary duty assignment or en route change-of-station travel.

By memorandum dated March 31, 1992, Mr. Barnard sought to have his temporary quarters period extended to cover his period of annual leave and to include the period of December 8 through 13, 1988. He stated that he needed the additional time for reasons beyond his control, namely that he had to return to Oklahoma in a leave status to attend to matters regarding delays in the sale of his Oklahoma residence to the relocation service contractor, to locate a suitable contract mover for his contract mover for his household goods, and to finish several items of government business at his former duty station. As an additional reason for the needed extension, he later advised the agency that his new permanent residence could not be occupied on December 8, 1988, the scheduled date, because of excessive radon gas levels in the house.

By letter dated January 18, 1993, his agency approved his request and extended his TQSE period an additional 22 days to December 13, 1988, including the period he was at his old station in an annual leave status. However, the agency limited his entitlement during the period of annual leave to his meals and incidental expenses (M&IE).

Mr. Barnard has been reimbursed TQSE in the amount of \$1,277.36 for the 24-day period from October 23 to November 15, 1988. He has submitted a voucher based on the post-approved TQSE extension, claiming M&IE in the amount of \$546.02 for the period November 16 to December 7, 1988, and full TQSE in the amount of \$336.46 for the 6-day period, December 8 to December 13, 1988. The certifying officer asks us to review the voucher and to decide whether Mr. Barnard may be reimbursed for the additional days of temporary quarters as approved by his agency.

Payment of subsistence expenses of an employee and his immediate family while occupying temporary quarters is authorized by 5 U.S.C. § 5724a(a)(3) (1988), as implemented by the Federal Travel Regulation (FTR). The regulations in

effect during the period in question are those contained in Chapter 2, Part 5 of the FTR.<sup>2</sup>

Paragraph 2-5.2(c) of the FTR provides, in part:

"(c) What constitutes temporary quarters. Generally, the term 'temporary quarters' refers to lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied when the transfer was authorized. . . ."

In this connection, we have recognized that an employee may be deemed to have disestablished his residence at the old duty station effective the day he reported for duty at his new duty station, even though his family remained at the residence at the old duty station. Accordingly, Mr. Barnard was properly reimbursed for the first 24 days of temporary quarters at the new station (October 23 to November 15, 1988).

We have held, however, that a residence is not deemed to have been vacated where the employee has relocated to the new duty station while the family remained in the old residence intending to join the employee at a later date.<sup>4</sup> Therefore, it is our view that where an employee is receiving TQSE at the new station, but returns to his old residence and resumes temporary occupancy there with his family, he is not entitled to subsistence expense reimbursement while there.

The resumption of temporary quarters after Mr. Barnard returned to Gainesville was required because he could not occupy his new permanent residence there on the scheduled occupancy date (December 8) due to excessive radon levels.<sup>5</sup> Under the provisions of paragraph 5.2a(2)(b) of the FTR, where the employee's new permanent quarters cannot be occupied due to reasons beyond his control, his period of temporary quarters may be extended if the reasons for the continuing need are acceptable to the agency. Since his occupancy of the new permanent residence was delayed only

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<sup>2</sup>Incorp. by ref., 41 C.F.R. § 101-7.003, as amended by GSA Bulletin FPMR A-40 (Supp. 10, March 13, 1984).

<sup>3</sup>George L. Daves, 65 Comp. Gen. 342 (1986), and decisions cited.

<sup>4</sup>Loretta M. Carter, B-229403, Aug. 8, 1988, citing to Michael J. Johnson, B-215708, Oct. 11, 1984.

<sup>5</sup>Supp. 10, March 13, 1984, footnote 2, supra.

for 1 week, it is our view that the agency action extending his temporary quarters period until December 13, 1988, was proper. Therefore, he is entitled to full TQSE for the period of December 8-13, 1988, and the only period during which he is not entitled to TQSE is the period of November 18 through December 5, 1988, while at his old residence with his family.

We also note that Mr. Barnard was paid \$350 as his miscellaneous expense allowance. If his family relocated to Gainesville in a timely manner,<sup>6</sup> he would be entitled to an additional \$350 miscellaneous expense allowance.<sup>7</sup>

/s/ Seymour Efros  
for Robert P. Murphy  
Acting General Counsel

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<sup>6</sup>FTR, para. 2-1.5a(2). See also, Donald R. Stacy, 67 Comp. Gen. 395 (1988).

<sup>7</sup>FTR, para. 2-3.3a(2) (Supp. 4, Aug. 23, 1982).